

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 04-30784-WRS

Chapter 7

JOHNNY G. SMITHERMAN
LILLIE I. SMITHERMAN,

Debtors

MEMORANDUM DECISION

This Chapter 7 bankruptcy case came before the Court for hearing on the Debtor's motion to avoid the judgment lien of Max Federal Credit Union on June 8, 2004. (Doc. 8). The Debtor was present by counsel Daniel G. Hamm and Max FCU was present by counsel Leo Math. The Debtor's motion is filed pursuant to 11 U.S.C. § 522(f), which permits the Debtor to "avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b)."

The pertinent facts of this case are not in dispute. The Debtors own a home in Elmore County, Alabama, with a value of at least \$50,000. It is subject to a mortgage in the amount of \$34,113.00. The Debtors are entitled to a homestead exemption on this property, to the extent of \$10,000. See, Ala. Code § 6-10-2. This leaves at least \$5,887.00 worth of equity to which the judgment lien of Credit Union may attach. The amount of the judgment is \$9,821.35.

It is undisputed that the Debtors properly have a homestead exemption and it is further undisputed that the judgment lien of the Credit Union encumbers the property with respect to any equity in excess of the first mortgage and the homestead exemption. Thus, the motion of the

Debtors may be granted only to the extent necessary to preserve their homestead exemption and denied otherwise.

Done this 8th day of October, 2004.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Daniel G. Hamm, Attorney for Debtor
Leonard N. Math, Attorney for MAX Federal Credit Union
Susan S. DePaola, Trustee

